

## europe inside out

Olivier Sykes looks at the Brexit project's current stock of political legitimacy

# input, output, throughput, stay put?



The December 2019 issue of *Town & Country Planning* included a Special Section on the experience and future of British New Towns. It featured articles on different places, including the pioneering New Town of Stevenage, developed around the 'quiet farming town'<sup>1</sup> of the same name. Its planned expansion to 60,000 (87,000 today) was opposed locally and when the Minister, Lewis Silkin, visited, he was famously met by a railway station sign 'altered to read 'Silkingrad', a reference to what many felt were similarities between Silkin's approach and that of a totalitarian regime'.<sup>2</sup>

As Hugh Ellis's introduction to the Special Section observes, however, despite such feelings, 32 new, or expanded, towns were created which are 'now home to 2.8 million people'.<sup>3</sup> He also notes that there were a great many achievements in the building of the New Towns, as well as mistakes. So accepting that the New Towns were not perfect, or welcomed and supported by everyone, but that they provide homes for almost 3 million people (often of better quality than others available at the time the towns were built, or those being built/converted today), was the creation of new and expanded towns on balance politically legitimate?

This question reminds us that planning has long drawn on different modes of legitimation for the choices it makes and the outcomes it delivers. These have ranged from plans and programmes whose legitimacy is embedded in representative democratic structures and the counsel of experts, to approaches which derive their legitimacy from more participative, or 'direct', forms of democracy.

Experience shows that developing plans and taking decisions that enjoy societal acceptance can be challenging, no matter which mode of legitimation is adopted. Factoring in an evaluation of their substantive impacts makes any assessment of the overall value of planning even trickier. Planning theorists have long pondered whether a 'good' and 'legitimate' process will necessarily deliver a 'good'

planning outcome as judged against other more substantive criteria – for example the delivery of development that contributes to greater social and economic opportunity and justice, while minimising environmental impacts.

Decisions may sometimes be taken – whether legitimated through representative or participative democratic processes – which seem likely to prove sub-optimal in substantive planning terms, at least in expert/professional judgement. But in a world where there are claims that people have had 'enough of experts', and that 'the age of experts is over',<sup>4</sup> and where there have been some emblematic failures of expert knowledge and systems, there are clearly challenges to the legitimation of decisions through a sole appeal to professional knowledge and expertise. The proposed exit of the UK from the EU, and similarly fraught political scenes being played out in other places, throw such issues into sharp focus.

## Democracy? 'Just count the votes and get on with it!'

A recent Facebook post argued that democracy involves no more than 'counting the votes and getting on with it'. In this view, any votes which have taken place more or less freely are viewed as having the same democratic quality, and democracy is perceived almost as a given naturally occurring phenomenon, rather as markets are presented in much classical and neo-classical economic thought. Others may see a difference between formal and substantive democracy.

At a formal level, an almost a tick-box 'procedural' view could be taken of a democratic process – for example, was the vote free and fair, were votes counted, was fraud minimised, were rules on the conduct of the ballot respected (for example on issues such as campaign funding)? But considerations of whether a vote was substantively democratic and of its democratic quality might bring into play other principles, values and questions, such as:

*'Who are to count as 'the people' and what is a 'majority' of them? Why (if at all) should majorities rule minorities? Should representative or direct forms of democracy be privileged? And is democracy merely majority rule or are other features part of the definition?'*<sup>5</sup>



For example, 2018 marked the centenary of the right to vote being extended to (some) women in the UK. But what does this imply about the 'democratic' votes held before 1918? They may have been considered to have been democratic in a 'formal' sense in the terms of their own time, but would we now consider that elections held prior to UK women being given the same voting rights as men – essentially becoming part of 'the people' (in 1928, actually) – had the same democratic quality as those held subsequently? It might be considered 'presentist' to say otherwise – back-casting the values of our own times onto a different era. But the wider point is that there may be values and principles that we may use to gauge the democratic *quality* of systems and outcomes which go further than the notion of the simple 'counting of votes and getting on with it'.

Thus David Hirsh argues that democracy: *'Is not simply the rule of the majority, but a whole system and culture of democratic life: the democratic and secular state; the rule of law; the principle that all human beings are in a profound sense of equal value; the deepening of international co-operation, law and trade; freedom of speech and association'*.<sup>6</sup>

But are these things intrinsic to democracy itself or just more likely to be achieved under democratic systems? Others argue slightly differently that things like 'toleration, entrenchment of rights and so on' are 'preconditions for democracy' but 'not constitutive of democracy itself' (i.e. part of the

definition). In both cases, though, further conditions are considered to be necessary to the effective functioning of democracy.

In our own times accusations that those who don't share majoritarian views are being 'undemocratic' for expressing a different view are often heard. So is democracy itself simply analogous with majoritarianism – and if so what kinds of majorities are acceptable? And because a decision has been reached by nominally democratic means, does this confer on it incontestable virtue?

For the author Slavoj Žižek, this keys into a fundamental philosophical question: are democratic ballots an indication of 'the truth', or 'a truth'?<sup>7</sup> And do all formally 'democratic' choices/acts possess equal intrinsic 'rightness', even if they have been arrived at through qualitatively different applications of democracy? Is democracy to be regarded as a virtue in itself, alongside things like justice and prudence that are often cited in classical and other thought; or is it simply a system of politics which is *more likely* to deliver certain desirable, or 'virtuous', things?

Linking to David Hirsh's comments above, in modern times democratic systems were certainly often seen as having a higher propensity to foster values such as toleration, entrenchment of rights and the rule of law than other systems. But is this always straightforward, or automatic? As Winston Churchill famously remarked in 1947:

*'Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise.*

*Indeed it has been said that democracy is the worst form of Government except for all those other forms that have been tried from time to time.'*<sup>8</sup>

More recently the philosopher AC Grayling has also acknowledged that aspects of democracy are not perfect, noting that:

*'in the powerfully justifiable claim of the many to be the holders or source of political authority, and in the danger of the collapse of this authority into either ochlocracy<sup>9</sup> or hidden oligarchy,<sup>10</sup> lies the acute dilemma of democracy itself.'*<sup>11</sup>

Drawing on political thinkers of the 18th and 19th centuries, he discusses how the 'the institutions and practices of the political state' could be arranged so 'that they could reconcile two key aims: that *the ultimate source of political authority should lie in democratic assent*, and that *government should be and could be sound and responsible*'<sup>11</sup> (emphases added). The point being argued is that for the full advantages of democracy to be realised – for it to be made 'more perfect' or 'more wise', to adapt Churchill's language – certain conditions, mechanisms, institutions and values may be necessary.

One issue that a narrow majoritarian view may face which is particularly relevant to planning is how minority interests and values are protected and served. What happens, for example, when formally democratic processes exclude participation by certain concerned parties/interests and result in the neglect of things like environmental protection, social justice, and the rights of minorities or those of non-human entities – for example endangered species, landscapes, or habitats, etc.?

To make democracy 'more wise' in these circumstances, should there be scope for any decision, or act, with such ethical or distributional impacts to still be subjected to further scrutiny and perhaps revision? What of an activity such as planning, often conceived as being based on *both* democratic assent and expertise and principles which may at times express/uphold ecological, social, economic, cultural values that are at odds with majoritarian wishes, or those of powerful interests? What makes planning a legitimate enterprise in such instances? Is it, in fact, legitimate if it proposes a course of action contrary to expressed majority opinion (and what of 'silent majorities')?

Furthermore, as decisions are reached through processes with highly variable democratic qualities, decisions that can be described as 'democratic' in purely formal terms may have varying degrees of democratic legitimacy. This directs attention to the

issue of how governing decisions acquire wider legitimacy.

### Building political legitimacy for governing decisions

For Zack Taylor,<sup>12</sup> the 'belief that the exercise of state authority is justifiable, even if one disagrees with specific decisions, is the essence of legitimacy', which 'is often characterized as a stock that can be expanded or diminished'. Authors such as Fritz Scharpf<sup>13</sup> have conceived of political legitimacy in 'terms of two normative criteria: *output effectiveness* for the people and *input participation* by the people' (emphases added). Others such as Vivian Schmidt<sup>14</sup> have sought to account for 'what goes on in the 'black box' of governance between input and output'. This has been termed *throughput legitimacy* and 'consists of governance processes with the people, analyzed in terms of their efficacy, accountability, transparency, inclusiveness, and openness to interest consultation'. For Schmidt:

*'These normative definitions of legitimacy pick up on Abraham Lincoln's famous dictum about democracy requiring government by the people (political participation), of the people (citizen representation), and for the people (governing effectiveness).'*

She also notes that in the 1960s David Easton defined input into the political system 'as consisting of citizens' demands and support (conferred not only through elections but also by citizen identity and sense of system legitimacy) and output as government decisions and actions'. Such thinking has often been applied to the EU, in which, while there is democratic input to, and scrutiny of, decisions, there is arguably a lack at a wider European scale of Easton's 'citizen identity and sense of system legitimacy'. In summary, political legitimacy derives from 'three democratic legitimising criteria':<sup>14</sup>

- **Input** ('government *by* and *of* the people') – are the wishes of the governed represented, as ascertained through different consultative mechanisms (for example democratic ballots)?
- **Output** ('government *for* the people') – are decisions effective in serving the interests of the governed? What is 'the problem solving quality of the laws and rules?'<sup>14</sup>
- **Throughput** ('government *with* the people') – are people involved on an ongoing basis in governing choices and decisions? Is there a recognition that no mandate is given 'once and for all' and that there is a role for ongoing democratic input and institutional scrutiny – for example for Parliament, the judiciary, and, when needed further, consultation?

In such views, political legitimacy thus requires more than a decision to be 'democratic' in strictly formal terms, directing attention to its 'democratic quality' in 'input' and ongoing 'throughput' governance terms, and whether impacts of choices pursued ('outputs') are for the better, or worse. How does the UK government's current policy of withdrawing the UK from the EU measure up in these terms?

### Input legitimacy

With 17.4 million voting to leave the EU, some view the 2016 referendum as the 'biggest ever democratic exercise' and by extension the biggest mandate in British history. Interestingly, since 1945 there have been 13 general elections with a higher turnout and six elections/referenda since 1950 where (with more than just two options) more of the electorate voted for the winning side than in 2016.<sup>15</sup> Furthermore, in 2016 with 16.1 million voting 'remain' and 12.9 million not voting at all, the 'leave' result represented around 37% of the electorate. This is some way adrift of a majority of 50% or the kind of super-majority (60%, for example) sometimes required for such major constitutional changes.

But be that as it may, the fact remains that 'on the day' more people actively voted to leave than for anything else, and in a democratic system used to weakly representative governments being formed with vote shares in the 30-40% range this may be seen as good enough. In Britain's 'winner takes all' parliamentary elections, a weak level of representativeness is typically accepted for a maximum of five years on the basis that (usually) more people chose a party's programme than any other, so it is fair to give it a chance to try to deliver – and that this is usually better than putting together potentially unstable mishmashes of parties in a coalition which enjoys an absolute majority of electoral support. Applying this logic to an epochal 50-year time horizon decision like leaving the EU is a rather different proposition.

Another issue in gauging the democratic quality of a decision is the extent of the franchise – 'who are to count as 'the people'...'<sup>5</sup> It is commonly seen as a matter of democratic justice that those most affected by a decision should be allowed a voice in the process. Yet the eligible electorate for the 2016 EU referendum effectively excluded key groups likely to be most concerned by the result – notably Britons living overseas for over 15 years, non-UK EU citizens living in the UK (often experiencing 'taxation without representation'), and 16-18 year olds. The exclusion of these groups does not make the vote to leave undemocratic in narrowly formal

terms, but it perhaps rather erodes the 'stock' of political legitimacy that it holds.

Another key gauge of input legitimacy is how far subsequent governing decisions reflect what the governed have indicated they want. So for a vote to hold a good 'stock' of input legitimacy there ideally needs to be a clear set of things put before the voters so they can see what they are voting for, weigh up any trade-offs between different choices, and hold the government to account subsequently.

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Thus in general elections party manifestos outline the programmes between which a choice can be made. If a party in power subsequently breaks a promise, then voters can take this into account next time they vote (as with the Liberal Democrats vote collapse following their U-turn on student fees during the 2010-15 UK coalition government). So 'input' democratic legitimacy can be quite high in such circumstances.

And though there have been many arguments advanced against the referendum as a device of consultation, with politicians as diverse as Clement Attlee and Margaret Thatcher seeing it as instrument of totalitarian regimes ('a device of dictators and demagogues'<sup>16</sup>), shouldn't the clarity of 'input' be high in a vote organised around a single issue? Or might there be some questions which referenda are better suited to providing 'input' on than others?

In the 2016 EU referendum it sometimes seemed that almost '57 varieties of leave'<sup>17</sup> were being offered (in or out of the EEA, single market, customs union, etc.) by a diverse leave campaign making different promises. The ballot paper itself only offered a 'Remain' option on the terms of David Cameron's renegotiation and an open-ended 'Leave' option. The campaign was thus effectively a contest between an imperfect and poorly communicated present and an unspecified utopian



vision in which 'Brexit' was presented as the response to, it seemed, almost every problem.

More widely, in the campaign there was no definition, nor high-profile discussion, of choices and concepts that have subsequently become central to the debate – such as 'soft' and 'hard' Brexit. This meant that the result and actual meaning of 'Brexit' has had to be interpreted and defined subsequently. This contrasts with referenda which present more clearly defined alternatives – for example that held in Ireland in 2015 on whether same-sex marriage should be legalised.

Some have considered political legitimacy from the perspective of the 'quality of the consent' of the people, including consideration in terms of 'informed and reasoned agreement produced by deliberation'.<sup>18</sup> Similarly, over recent decades planning theorists have drawn on the work of Jürgen Habermas and his theories of communicative rationality and action, which suggest that for it to be 'undistorted' and for the 'force of the better argument' to carry the day, communication must be *comprehensible, truthful, sincere and legitimate*. Considering the 2016 EU referendum campaign against such criteria is surely sobering.

Finally, for its outcome to be judged politically legitimate, a campaign and vote may be expected to take place according to the stipulations of the applicable electoral law, or risk losing the quality of being even formally democratic. It is beyond the scope of the present article to consider such issues in relation to the 2016 EU referendum, but investigative journalists and the justice system continue to reveal and evaluate the distortions of the electoral process which unlawful campaign spending and evidence of other forms of interference and manipulation engendered. Whether any of this helps the UK in its current predicament, or will ultimately only be relevant to historians, depends on how wedded the UK remains to the rule of law and constitutional democracy.

## Output

In a quote much cited in the media since the UK's EU referendum and the election of Donald Trump in the US, the journalist and satirist H L Mencken stated that 'democracy is the theory that the common people know what they want, and deserve to get it good and hard'. In other words, what counts is input, and it is for the people to find out the consequences of their choices in a kind of 'you make your bed and lie in it' version of democracy.

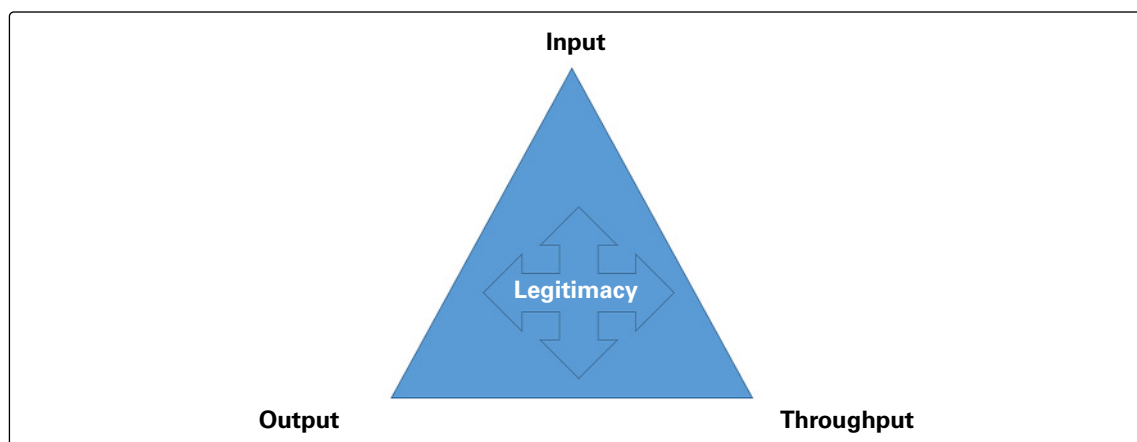
The notion of output legitimacy, however, suggests that legitimacy also derives from the effectiveness of decisions in serving the interests of the people

and solving their problems. In order to anticipate the effects of different policies it is thus common for governments to conduct impact studies. These became a political issue at the end of 2017 as the then 'Brexit Secretary' David Davis claimed before a parliamentary select committee that his department had not conducted such studies into the impacts of leaving the EU.<sup>19</sup> When the results of such impact studies relating to the economy were later revealed, they showed that growth under all leave scenarios would be below that resulting from remaining in the EU.<sup>20</sup> Significantly, in an anti-expert climate even such impact assessments have been seen by some as ploys to undermine or 'sabotage' Brexit by 'biased' civil servants.

Meanwhile, having been voluble on the benefits of leaving the EU, but thin on the details during the 2016 campaign, one might have expected the Brexiters themselves to cement the political legitimacy of their project by working diligently to increase its initial 'stock' of input legitimacy by putting forward a concrete plan for a future UK-EU relationship which demonstrated its legitimacy in 'output' terms. Because they have not done so, the field has been left clear for analyses that in most cases suggest that for the foreseeable future the output dimension of Brexit will be more about seeking to make up for what has already been lost than about any new gains.<sup>21</sup> Even Theresa May will not be drawn on whether the withdrawal agreement she has concluded with the UK's EU partners is better than remaining in the EU.<sup>22</sup>

Meanwhile, ardent Brexiters have subtly, but increasingly it seems, shifted from invocations of lands of milk and honey and sunlit uplands to more Nietzschean-flavoured 'That which does not kill us makes us stronger' arguments. Or perhaps more accurately the Brexit credo is now something like 'That which makes us weaker, may not kill us, and one day if we are lucky (possibly in 50 years' time) we may be stronger again'.<sup>23</sup>

The debate on impacts also remains resolutely focused on economic issues.<sup>24</sup> Even at this stage, it is only slowly that 'outputs' in other areas which were scarcely discussed during the referendum, but which are potentially affected by any Brexit, are beginning to be seriously recognised. How to resolve the issues surrounding the land border on the island of Ireland created by May's 'red lines' and logistical issues at sea borders and entry points elsewhere are two of the most prominent. Former Brexit Secretary Dominic Raab's admission that he had not realised the importance of the Dover to Calais crossing to UK trade<sup>25</sup> (seemed to epitomise the casual approach to considering output



**A legitimization triangle?**

which has coursed through the preparations for Brexit.

Meanwhile, alongside discussion of obvious challenges, official policy statements and statements from certain organisations often feature rather ‘forced’ references to the opportunities of Brexit, in many cases referring to things that could have been as easily – and frequently more easily – achieved while staying in the EU. There have also been some instances of Ministers trying to claim credit for measures which were originally EU initiatives.<sup>26</sup> The lack of prominence accorded to, and a dismissive government attitude towards, the views of the private, community and research sectors, and the professions, on the EU debate continues – an issue previously raised in these pages.<sup>27</sup>

### Throughput

Throughput legitimacy examines what happens between input and output and ongoing governance processes in terms of their ‘efficacy, accountability, transparency, inclusiveness, and openness to interest consultation’.<sup>14</sup> This might mean involving people on an ongoing basis in governing choices and decisions, recognising that no mandate is given ‘once and for all’ and that there is a role for institutional scrutiny – for Parliament and the judiciary, and perhaps further democratic input from the governed.

The May government tried to exclude Parliament early on from one of the first key acts in converting the referendum result into the output of leaving the EU. Democracy campaigners had to go to court to ensure that the government respected the constitutional sovereignty of Parliament and that it would get a chance to vote on triggering Article 50, giving notice of the UK’s intention to leave the EU.

Eurosceptics who had campaigned for decades about the hypothetical surrender of Parliament to the EU now apparently supported its hollowing out by the UK executive.

Through much of the process the government has seemed to view Parliament as an impediment – for example, withholding legal advice on the EU withdrawal agreement to the extent that it was found to be in contempt of Parliament in December 2018. More recently there have been some calls for Parliament to be suspended, to frustrate attempts by some MPs to forestall the possibility of no-deal Brexit.<sup>28</sup>

Yet, seeking to bolster the input legitimacy and secure a strengthened mandate for the government’s ‘red-lined’ version of leaving the EU, Theresa May *did* call a general election in 2017. Although the government lost its majority, there was little nuancing of the approach adopted. In fact, in response to petitions on various aspects of the leave process, the government has repeatedly used the argument that 80% of voters at the 2017 general election supported parties committed to implementing the leave result of 2016. This is convenient, perhaps, but involves a democratic sleight of hand in that it treats an election result based on a multi-party and multiple programme and issue poll almost as another binary-choice referendum on leaving the EU, and not a verdict on (among other things) the approach subsequently adopted by the government following the referendum result. This calls to the fore another dimension of throughput legitimacy: inclusiveness.

Former Minister for Europe Jim Murphy contrasts the response to the 2016 EU referendum with the response to the 2014 Scottish independence referendum, where a commission on further

devolution was created to 'determine what kind of 'No' vote should be implemented' and which 'offered many of the 45% of 'Yes' voters and the SNP a chance to shape an outcome, the principle of which they opposed'.<sup>29</sup>

For Zack Taylor, the 'belief that the exercise of state authority is justifiable, even if one disagrees with specific decisions, is the essence of legitimacy'. Therefore more inclusive approaches such as these might add to the 'stock' of political legitimacy of choices made on a divisive issue. In stark contrast to such approaches to addressing divisions, from the start a defining feature of the May governments has been the limited attempts they have made to build consensus and search for a compromise balancing the concerns of different groups.

Another crucial 'throughput' lacuna in the devolved UK state has been the weak inclusion of devolved administrations in the leave process. As widely reported, this has not played well in the devolved 'Celtic' nations, and has also added to feelings of exclusion in the English regions and city regions.<sup>30</sup>

The apparent lack of interest in approaching the leave process more inclusively and reaching out to different groups and territorial interests was epitomised in Theresa May's 'Letter to the nation' in November 2018.<sup>31</sup> The tone of this and its repetition of many of the decades-long tropes of Euroscepticism compounded anger and the sense of alienation at what read like a set of fictive foundational myths for a new state. In response Scottish First Minister Nicola Sturgeon incisively noted that 'almost nothing in this desperate letter is true'.<sup>32</sup> This undermined the letter's call for 'renewal and reconciliation' between different groups. After all, the first word of the notion of 'truth and reconciliation' which has been employed in certain divided societal contexts is 'truth'. The letter seemed not so much to seek truth and reconciliation as call for a pact of forgetting.

## Conclusion

Democracy can be seen as a simple matter of 'counting the votes and getting on with the job', yet, no matter what one's view on the UK leaving the EU, more nuanced notions of substantive democratic quality and political legitimacy can help make sense of the tortuous aftermath of the 2016 referendum.

Output and throughput legitimacy address the risk that the people vote for something ill-defined and then those in power get to decide what they should have 'good and hard' as a result, regardless of the consequences – rather in the manner that the UK government has monopolised the interpretation of

the voters' input in 2016. Yet with an issue as big as leaving the EU, and bearing in mind the democratic 'quality' of the input provided by the 2016 referendum, all parts of the democratic system and all 'legitimacies' needed to be mobilised through a thorough consideration of the consequences for society ('output') and by fostering ongoing debate and scrutiny of decisions ('throughput').

The impact studies of government and others on the consequences of Brexit have flagged its output implications, while the quality of throughput legitimacy might be gauged in terms of how Parliament and the people have been involved on an ongoing basis beyond a one-off chance to vote. The latter may be deemed to be significant as the right to change one's mind is fundamental to the maintenance of democracy, as even David Davis has said, and no mandate is given for 'all time'.

Indeed, even a planning permission expires after a certain period, after which a new application will probably be required, to ensure that, if circumstances change, a proposal can be reconsidered. Perhaps a planner with experience of attempting to convert political input expectations, no matter how problematic, into workable outputs that serve the public should have been put in charge of the Brexit process (as if!)? There are, after all, plenty of cautionary examples of plans and 'solutions in search of problems' whose ill-foundedness soon became obvious, but which due to political 'lock-in' were 'ploughed on with', regardless of shifts in professional viewpoints and public opinion and palpable 'early' implementation failure.

In the final analysis the Brexit process does not shine across the input, output or throughput dimensions of political legitimacy, and its 'stock' of legitimacy has gradually eroded since the initial vote, leading to the legitimacy crisis which is being played out daily in Parliament, in the street, and across the news screens. Perhaps it is time to test the input legitimacy of the 'stay put' option again? For as the masterplanner of Stevenage New Town, and Lever Professor of Civic Design at the University of Liverpool, Gordon Stephenson, remarked in his inaugural lecture in 1948:

*'We do not want 'one plan once and for all, but the conscious selection by the people of successive plans''.*<sup>33</sup>

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## Notes

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Intriguingly a referendum was held that apparently showed 52% 'entirely against' the expansion of the town, but despite this the plan went ahead – see [https://en.wikipedia.org/wiki/Stevenage#Stevenage\\_New\\_Town](https://en.wikipedia.org/wiki/Stevenage#Stevenage_New_Town)
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- 9 Ochlocracy – defined in AC Grayling: *Democracy and its Crisis*. One World Books, 2018, p.2 as 'mob rule, driven in an unruly fashion by emotion, self-interest, prejudice, anger, ignorance and thoughtlessness into rash, cruel, destructive and self-destructive action'
- 10 Oligarchy – defined in I McLean: *Oxford Concise Dictionary of Politics*. Oxford University Press, 1996, pp.348-49 as 'government by the few... rulers who govern in their own interest'; and hidden oligarchy – defined in AC Grayling: *Democracy and its Crisis*. One World Books, 2018, p.2 as 'a group using the excuse or the fig-leaf of appeals to democratic licence to carry out their agenda'
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